

Response to the consultation on the housebuilding market study

Heads of Planning Scotland (HOPS) is the representative organisation for senior planning officers from Scotland's local authorities and national park authorities.

Consultation questions

General questions

1. Do you agree with our proposed geographic scope for the market study, as set out in paragraph 2.32? If not, why not? In particular, do you think that Northern Ireland should be included in the scope of the market study?

Regarding paragraph 1.27 – HOPS would highlight that the language used “required to support new developments” should be more accurately reflected as “required to mitigate the impact of development”.

The document does not cover the 2019 Planning (Scotland) Act 2019 in respect of infrastructure delivery, and the further guidance etc. awaited from Scottish Government to assist in delivering upfront infrastructure to facilitate new housing (and other) development to assist in meeting housing need. This is of particular importance given the emphasis on brownfield sites within NPF4.

As a general point the scope does not pick up, in Scotland, the applicant has the ability to set out an Agreement of Understanding rather than signing a S75 legal agreement. The former weakens the negotiation the local planning authority can have, including developer obligations relating to infrastructure delivery.

The scope of the questions should be framed more around what is required to unblock hurdles. From a local planning authority perspective these issues include funding for infrastructure delivery. Often house builders as applicants will advise on issues they have with Scottish Water, Scottish Power as examples to deliver sites. Electricity supply is increasingly becoming a constraint.

2. Do you agree with our areas of focus for the market study, as set out in paragraphs 2.1 to 2.31? If not, what other matters should we focus on and why?

Regarding paragraph 2.7 and thereafter, does not reflect the stage of a development plan, and the primacy of a development plan in respect of allocating sites suitable for residential development.

The terms used ‘outline planning permission’ and ‘detailed...’ are not reflective of the types of consents in Scotland.

Paragraph 2.7 and the following points do not highlight the critical stage of determining infrastructure capacity, and the challenge of delivering new infrastructure be that extensions/new schools, transport etc.

Paragraphs 2.11 and 2.12 are more reflective of a greenfield site, but often developments will come forward on brownfield sites not allocated for residential in the development plan, but which have become available for redevelopment and are suitable for such a reuse.

Paragraph 2.11 – the level of affordable housing in Scotland is set out in NPF4 as 25% and it will be for local planning authorities to evidence the need and consider any change to that % through the

forthcoming local development plans. The point being, that planning policy usually sets % affordable rather than this being negotiated through individual applications.

In the main, applications are usually submitted for residential development from the developer rather than the landowner (2.23(a)), and this generally has not resulted in stalled sites. Often where a residential site is slow to come forward relates to the challenges of infrastructure delivery at an early stage of a development, or market conditions. In Scotland, further details are awaited from Scottish Government on a new model for infrastructure delivery.

Paragraph 2.23(c) & (d) HOPS disagree with this statement.

Paragraph 2.25 – As a general response, HOPS do not consider that ‘land banking’ is an issue within Scotland.

The scope of the report should better reflect Scotland, related matters and the market. Within Scotland this will vary considerably from the Highlands and Islands to the cities.

3. We may carry out case studies during the course of the market study. Can you suggest any local areas across the UK we should look at where you consider:

- a. The housebuilding market is working well, and explain what factors are driving this in each area;
- b. The housebuilding market is not working well, and explain what factors are driving this in each area;
- c. There is a high degree of concentration in housebuilding activity;
- d. There is a significant under-delivery of housing relative to local need;
- e. LPAs are more or less proactive in the planning conditions they impose, particularly in relation to affordable housing;
- f. Small and medium housebuilders are more prevalent compared to other areas.

No comment

4. How can competition in this market be strengthened?

No comment

5. How can the functioning of the market be improved?

No comment

6. What, if any, are the key differences in housebuilding in each of England, Scotland, and Wales that should be reflected in our analysis? Please explain any such differences and how each may affect the analysis.

A key difference is infrastructure delivery and the funding to help delivery upfront/early Infrastructure to facilitate development and build new homes to meet housing need and grow economies.

The operation of the market

7. Have any of the following aspects changed over time? If so, how and why?

- a. The role of land promoters and land agents in transactions.
- b. The propensity for land promoters and land agents to be used as part of securing planning permission and land transactions.
- c. The structure of the market for land promoters and land agents.

No comment

8. Have any of the following aspects changed significantly over time? If so, how and why?

- a. Time and cost for developments to go through different stages of the planning process.
- b. Likelihood of success in securing planning permission.
- c. Propensity for developers to negotiate s106 requirements to reduce affordable housing requirements.
- d. Propensity for developers to be successful in negotiating s106 requirements to reduce affordable housing requirements.

The Planning (Scotland) Act 2019 placed 49 new and unfunded duties on Planning Authorities in Scotland. Some of the changes that have been implemented (and some yet to be) is resulting in a more complex assessment of development proposals, which will result in applications taking generally longer, particularly larger and more complex residential proposals. It is much more costly for a submission for planning to be made, and more costly for a local planning authority to assess and determine applications. HOPS have been seeking full cost recovery through statutory fees for many years.

9. How do the aspects referred to in questions 7 and 8 vary (if at all) by:

- a. Size of development the application is for?
- b. Size or identity of applicant (eg small developer, large developer, land promoter)?

No comment

10. What are the main barriers (if any), to the provision of affordable housing for (a) LPAs and (b) developers?

Further Government funding to assist in the delivery of affordable homes, particularly on brownfield and town centres sites to assist in meeting outcomes envisaged through NPF4.

In relation to freehold estates:

11. Please comment on the extent to which each of the following may currently be problematic, and how (if at all) each has changed over time:

- a. Non-adoption of roads or other public amenities, and the different ways in which unadopted amenities may be managed (eg by housebuilders, estate management firms, or resident-led companies).
- b. Estate charges, and their materiality.
- c. Restrictions and/or obligations placed on freeholders via deeds of covenant.

No comment

Constraints on buyers' choices

12. As regards land:

- a. What issues (if any) do developers face in identifying and securing land for development and how do they navigate these? Do these issues differ depending on the size of the developer?
- b. What issues (if any) do landowners face in finding purchasers of land for development and how do they navigate these?
- c. Have any issues described above changed over time? If so, how and why?

No comment

13. As regards charges made to freehold owners on residential estates:

- a. How transparent are estate charges and covenants (including how they may change over time) to prospective house buyers on freehold estates at all stages up to the point of sale?
- b. What influence (if any) do homeowners have over the companies managing their estates?
- c. Post-sale, what safeguards exist to ensure the quality of the management service or that the estate charges applied are fair, reasonable, and transparent?
- d. Are freeholders' rights (including to redress) in relation to estate management services and charges, and how covenants are applied, adequate? If not, what are the key gaps?

No comment

Market interactions

14. How do land promoters and land agents compete to secure contracts with (a) land owners and (b) developers (or vice versa)?

No comment

15. What are the key factors or objectives LPAs need to balance in taking decisions on housebuilding, and what drives these requirements? To what extent (if any) do these factors conflict, either with each other or with housebuilders' objectives?

Housing Needs and Demand Assessments are undertaken. Key factors are meeting housing need, the role the housebuilding industry has in sustaining and growing economies across Scotland and improving the quality of places.

16. Are there differences in the bargaining power between LPAs and developers when negotiating with each other? If so, what are the key differences and why do they arise?

The key requirements of a development are set out through Local Development Plans. Often the negotiation relates to design and improving the quality overall, and new infrastructure delivery.

17. Where s106 agreements are negotiated after the award of outline planning permission, what are the implications for a) LPAs and b) developers, compared with negotiations before outline planning permission is awarded? Please explain with reference to costs, benefits, and any other outcomes.

No comment

18. How and when are decisions made about the ownership and management of public amenities on freehold estates, including whether they are adopted? What are typically the key factors in such decisions? What are the key barriers to adoption?

Where relevant, please indicate in your response how the above may differ among:

- a. LPAs,
- b. developers,
- c. house buyers.

No comment

Exploitation of market power

19. Do any of the participants in the market (including but not limited to housebuilders, land agents, and land promoters) have market power? If so, what drives this and how (if at all) do they exploit it?

No comment

20. What factors influence the size of land banks held by developers?

No comment

21. Have any of the following aspects changed significantly over time? If so, how and why?

- a. The concentration of housebuilding at local level, in particular whether concentration is high in specific local areas.
- b. The size of land banks held by developers and differences between developers in this respect.
- c. The rate at which new properties are built-out.
- d. The propensity for land with planning permission not to be built-out

No comment

22. What are the key factors that determine the incentive and ability for developers to build-out new sites at a certain rate?

No comment

Barriers to entry and expansion

23. What differences (if any) are there between small, medium and large developers in:

- a. The types of developments they develop (eg types of housing provided).
- b. The type of land they develop on (eg size of site, propensity to use greenfield vs brownfield sites, urban vs rural).

No comment

24. What are the key challenges for small and medium developers in:

- a. Securing sites for development?
- b. Securing planning permission?
- c. Building-out sites?

No comment

25. What differences (if any) exist between the developments built by large, medium and small builders, eg in terms of quality of housing built, speed of build, diversity of housing built?

No comment